

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 Adams Cove Group, and Futurewise,

4  
5 Petitioners,

6 v.

7  
8 Thurston County,

9  
10 Respondent.

Case No. 07-2-0005

**FINAL DECISION AND ORDER**

11  
12 **I. SYNOPSIS OF DECISION**

13 In this Order the Board finds that based on its limited and generally positive comments  
14 regarding the Yelm/Thurston County joint plan amendments, Adams Cove Group lacks  
15 participation standing to bring this appeal and it is dismissed as a party.  
16

17 The Board again rejects Thurston County and Yelm's argument that this appeal is untimely  
18 because Petitioner failed to challenge the 1994 establishment of the Yelm UGA. The  
19 Board reaffirms its earlier holding that when the County chose to amend the population  
20 allocations for the Yelm UGA it necessarily raised the issue of whether the UGA was  
21 properly sized and therefore Petitioner may challenge the size of the Yelm UGA in this  
22 appeal.  
23

24  
25 The Board finds that although its earlier Order Finding Compliance (UGAs) in *1000 Friends*  
26 *of Washington v. Thurston County*, Case No. 05-2-0002 found Thurston County's  
27 amendments to its plan and zoning ordinance adopted by Resolution No. 14034 and  
28 Ordinance No. 14035 complied with RCW 36.70A.110, it does not preclude the present  
29 appeal. The present appeal challenges a plan that was not amended to comply with the  
30 County's action in adopting Resolution 14034 and Ordinance 14035. The Board's task in  
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32

1 this appeal is to determine whether, on the record created for the adoption of Resolution  
2 13734, the Yelm/Thurston County Joint Plan complies with the GMA.

3  
4 The Board finds that the Joint Plan approved by Resolution 13734 permitted land supplies  
5 97% in excess of residential needs, 116% in excess of commercial needs, and 1040% in  
6 excess of industrial needs. The Board finds nothing in the record that demonstrates this  
7 supply of land is necessary to accommodate projected growth and is likely to lead to the  
8 inappropriate conversion of undeveloped land into sprawling, low-density development in  
9 violation of RCW 36.70A.020(2). In addition, an improperly sized UGA, especially one in  
10 excess of the projected need, violates RCW 36.70A.110 which requires UGAs to be  
11 sufficient to accommodate 20 years of growth at urban levels.  
12

13  
14 On the other hand, the Board finds that Futurewise has failed to demonstrate that the  
15 County violated RCW 36.70A.115. RCW 36.70A.115 is not merely a restatement of  
16 36.70A.110. This provision of the GMA seeks regional coordination, which the  
17 Yelm/Thurston County Joint Plan reflects.  
18

19 Futurewise has failed to demonstrate that Resolution 13734 violates RCW  
20 36.70A.130(1)(a). No language in Resolution 13734 suggests this enactment was a seven  
21 year update to a comprehensive plan under that provision of the GMA.  
22

23 The Board finds that Futurewise has failed to carry its burden to prove a violation of RCW  
24 36.70A.020 (1), (8), (9), (10) or (12). In addition Futurewise has not demonstrated a violation  
25 of RCW 36.70A.040(3)(c) or RCW 36.70A.070(1).  
26

## 27 28 **II. PROCEDURAL HISTORY**

29 On December 20, 2006, Thurston County adopted Resolution 13734, amending the  
30 Comprehensive Plan for Thurston County and the Yelm/Thurston County Joint Plan.  
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1 On February 16, 2007, Petitioners filed a timely appeal. The Board conducted a Prehearing  
2 Conference on March 22, 2007, and issued the Prehearing Order on March 23, 2007.

3  
4 On May 24, 2007 the Board heard the County's Motion to Dismiss the Petition for Review.  
5 An order denying that motion was issued on June 4, 2007.

6  
7 The Board granted joint requests for extension of the case schedule on June 7, August 14,  
8 December 5, 2007, and February 27, 2008.

9  
10 On July 2, 2008, the Hearing on the Merits (HOM) was conducted at the Board's offices in  
11 Olympia. Adams Cove and Futurewise were represented by Tim Trohimovich. Thurston  
12 County was represented by Jeffery Fancher. The City of Yelm was represented by Brent  
13 Dille. Board members Holly Gadbaw, William Roehl, and James McNamara were present.  
14 James McNamara presided.

### 15 16 17 **III. BURDEN OF PROOF**

18 For purposes of Board review of the comprehensive plans and development regulations  
19 adopted by local government, the GMA establishes three major precepts: a presumption of  
20 validity; a "clearly erroneous" standard of review; and a requirement of deference to the  
21 decisions of local government.

22  
23 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and  
24 amendments to them are presumed valid upon adoption:

25 Except as provided in subsection (5) of this section, comprehensive plans and  
26 development regulations, and amendments thereto, adopted under this chapter are  
27 presumed valid upon adoption.

28 RCW 36.70A.320(1).

29  
30 The GMA further provides that the standard of review shall be whether the challenged  
31 enactments are clearly erroneous:

1 The Board shall find compliance unless it determines that the action by the state  
2 agency, county, or city is clearly erroneous in view of the entire record before the  
3 board and in light of the goals and requirements of this chapter.

4 RCW 36.70A.320(3)

5 In order to find the County's action clearly erroneous, the Board must be "left with the firm  
6 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,  
7 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

8 Within the framework of state goals and requirements, the boards must grant  
9 deference to local government in how they plan for growth: In recognition of the  
10 broad range of discretion that may be exercised by counties and cities in how they  
11 plan for growth, consistent with the requirements and goals of this chapter, the  
12 legislature intends for the boards to grant deference to the counties and cities in how  
13 they plan for growth, consistent with the requirements and goals of this chapter. Local  
14 comprehensive plans and development regulations require counties and cities to  
15 balance priorities and options for action in full consideration of local circumstances.  
16 The legislature finds that while this chapter requires local planning to take place  
17 within a framework of state goals and requirements, the ultimate burden and  
18 responsibility for planning, harmonizing the planning goals of this chapter, and  
19 implementing a county's or city's future rests with that community.

20 RCW 36.70A.3201 (in part).

21 In sum, the burden is on the Petitioners to overcome the presumption of validity and  
22 demonstrate that any action taken by the local government is clearly erroneous in light of  
23 the goals and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW  
24 36.70A.320(2). Where not clearly erroneous and thus within the framework of state goals  
25 and requirements, the planning choices of local government must be granted deference.

#### 26 IV. ISSUES PRESENTED

- 27 1. Does the adoption of Resolution 13734 without reducing the size of the Yelm  
28 Urban Growth Area fail to comply with RCW 36.70A.020 (1-2, 8-10, 12)?  
29 2. Does the adoption of Resolution 13734 without reducing the size of the Yelm  
30 Urban Growth Area fail to comply with 36.70A.040?  
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3. Does the adoption of Resolution 13734 without reducing the size of the Yelm Urban Growth Area fail to comply with 36.70A.070(1)?
4. Does the adoption of Resolution 13734 without reducing the size of the Yelm Urban Growth Area fail to comply with 36.70A.110 (1) and (2)?
5. Does the adoption of Resolution 13734 without reducing the size of the Yelm Urban Growth Area fail to comply with 36.70A.115?
6. Does the adoption of Resolution 13734 without reducing the size of the Yelm Urban Growth Area fail to comply with 36.70A.120?
7. Does the adoption of Resolution 13734 without reducing the size of the Yelm Urban Growth Area fail to comply with 36.70A.130 (1)(a)?

## V. DISCUSSION

On December 20, 2006, Thurston County adopted Resolution 13734 which, specific to this matter, amended the Yelm/Thurston County Joint Plan. Amendments included the most recent 20-year population projection and updated information based on the 2000 Census and Thurston County Regional Planning Council's Buildable Lands Report for commercial, industrial, and commercial lands. Petitioners challenge this action asserting primarily that the size of the Yelm UGA exceeds the project demand for urban lands over the course of the 20-year planning horizon.

### Position of the Parties

#### *Futurewise*

##### Issue 1

Futurewise notes that the OFM population projections limit the size of urban growth areas (UGAs). It argues that including too much land within the Yelm UGA violates goals 1 and 2 of the Growth Management Act (GMA) because urban growth is not being channeled into areas already served by infrastructure, but instead will lead to the conversion of urban land

1 into sprawling, low-density development outside of areas served by infrastructure.<sup>1</sup>  
2 Futurewise also argues that Yelm's oversized UGA violates goal 10 of the GMA by putting  
3 Puget Sound and oyster beds at risk by allowing development in an excessively large urban  
4 area, increasing storm water runoff.<sup>2</sup>  
5

## 6 Issue 2

7 Futurewise further notes that RCW 36.70A.040(3)(c) requires the County to designate and  
8 take other actions related to UGAs under RCW 36.70A.110. It contends that RCW  
9 36.70A.110 limits the size of the UGA to land necessary to accommodate the OFM  
10 population projection selected by the county and, if used, a reasonable market factor.  
11 Futurewise argues that the Yelm Comprehensive Plan Update (Update) includes a UGA that  
12 is dramatically larger than needed to accommodate the new OFM population projection.<sup>3</sup>  
13 While asserting that the Yelm Comprehensive Plan Update does not include a market  
14 factor, Futurewise argues that if the excesses of capacity over demand *were* treated as  
15 market factors, they are excessive, and therefore the Update violates RCW  
16 36.70A.040(3)(c).  
17  
18

## 19 Issue 3

20 Futurewise also argues that RCW 36.70A.070(1) requires that the land use element provide  
21 guidance for corrective actions to mitigate or clean discharges that pollute the waters of the  
22 state, including the Puget Sound. Futurewise asserts that the excessively large urban  
23 growth area will harm the waters of the state, including the Puget Sound and that the Land  
24 Use Element of the Yelm comprehensive plan update fails to provide the necessary  
25 guidance or to right size the UGA in violation of the GMA.<sup>4</sup>  
26  
27

## 28 Issue 4

29  
30 <sup>1</sup> Futurewise's Prehearing Brief at 9-10.

31 <sup>2</sup> Id. at 10.

32 <sup>3</sup> Id. at 11.

<sup>4</sup> Id. at 11-12.

1 Futurewise notes that the OFM projection places a cap on the land a county may allocate to  
2 UGAs, and that a market supply factor may be used in sizing the UGA. In this case,  
3 Futurewise notes, neither the Yelm nor the Thurston County UGA included a market factor.  
4 Futurewise points out that the County hired a team of economists and planners to review  
5 the Thurston Regional Planning Council's Buildable Lands Model and they concluded that a  
6 market factor of no more than 10% should be used for vacant lands and a market factor of  
7 no more than 15% should be used for underutilized lands. Futurewise points out that the  
8 excess residential, commercial and industrial capacity in the Yelm UGA substantially  
9 exceeds these recommendations, demonstrating that the UGA has more capacity than  
10 needed to accommodate planned growth.<sup>5</sup>  
11

#### 12 Issue 5

13 Futurewise next points out that RCW 36.70A.115 limits the UGA to the land needed to  
14 accommodate the population projection chosen from the OFM range. It asserts that since  
15 the Yelm UGA exceeds that limit, it is in violation of that statute.<sup>6</sup>  
16  
17

#### 18 Issue 6

19 Futurewise abandons Issue 6.  
20

#### 21 Issue 7

22 Futurewise points out that Resolution 13734 is an update under RCW 36.70A.130 and that  
23 RCW 36.70A.130(1)(a) requires that the County, during the update process ensure its plan  
24 is in compliance with the GMA. Futurewise asserts that this provision was violated because  
25 the County did not "right size" the Yelm UGA.<sup>7</sup>  
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#### 27 Relationship to Case No. 05-2-0002

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31 <sup>5</sup> Id. at 14.

32 <sup>6</sup> Id..

<sup>7</sup> Id. at 15.

1 Finally, Futurewise argues that any finding of compliance in Case No. 05-2-0002, or another  
2 case, that did not include the same population projection or the same horizon year for the  
3 comprehensive plan, or that included a different market factor, is inapplicable to this case.<sup>8</sup>  
4 It argues that this Board has held that a finding of compliance does not prevent a petitioner  
5 from raising new arguments as part of a separate petition for review. It notes that none of  
6 the arguments made in this case were made in the compliance phase of Case No. 05-2-  
7 0002 and therefore they can make these arguments in the present case.  
8

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10 *Thurston County's Position*

11 In its response, Thurston County and Intervenor City of Yelm (hereafter "the County and  
12 Yelm") raised three issues.<sup>9</sup> First, that Adams Cove Group should be dismissed as a  
13 participant for lack of standing. Second, that the Petition should be dismissed as untimely.  
14 Third, that the claims of Petitioners have already been addressed by the Board's May 29,  
15 2008 Order of Compliance regarding the County's UGAs.  
16

17 With regard to standing, the County and Yelm noted that Adams Cove Group's only  
18 participation was via two comment letters, both in support of the County's action, and  
19 neither related to the issues presented to the Board.  
20

21 The County and Yelm assert that the Petition should be dismissed as untimely. They point  
22 out that Resolution 13734, amending the Yelm/Thurston County Joint Plan ("Joint Plan")  
23 was adopted on December 20, 2006. While a Petition for Review was filed on February 16,  
24 2007, the County and Yelm assert that the Joint Plan did not amend, or even consider, the  
25 Yelm UGA as part of the 2006 annual amendment process. Consequently, the County and  
26 Yelm argue that Petitioners ought to have challenged the Yelm UGA in 1994 when it was  
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31 <sup>8</sup> Id. at 16.

32 <sup>9</sup> Joint Prehearing Brief of Thurston County and the City of Yelm.



1 established. They point out the County's seven and ten year updates were adopted in 2004  
2 and the subject of appeal in Case No. 05-2-0002.

3  
4 Finally, the County and Yelm argue that this Board has already found, in Case No. 05-2-  
5 0002, that the Yelm UGA is properly sized. They note that Futurewise has acknowledged in  
6 the June 5, 2007 Joint Motion for Extension of Case Schedule and its April 18, 2007  
7 Response to Motion to Dismiss that the decision in Case No. 05-2-0002 involved the same  
8 issues and if an order finding compliance was found in that case, then the issues in this, the  
9 2007 case, would be resolved.  
10

11  
12 *Futurewise's Reply*

13 In reply, Futurewise notes that the County and Yelm did not address any of its arguments  
14 raised in Petitioners' opening brief, but instead challenge Adams Cove Group's standing,  
15 the timeliness of Petitioners' appeal and the effect of the compliance order in Case No. 05-  
16 2-0002.  
17

18 With regard to the issue of standing, Petitioners claim that the Adams Cove Group's letter  
19 clearly raised concerns about the management of population growth in Yelm.<sup>10</sup> They argue  
20 that its concern about the management of population growth is reasonably related to Issues  
21 1-5 and 7, based on arguments it made in its opening brief regarding low density sprawl, the  
22 size of the Yelm UGA, effects on water quality, and the need to accommodate growth.  
23

24 Petitioners also assert that nothing in the GMA requires a party to oppose an enactment in  
25 order to appeal it. Thus, Adams Cove Group's statements that the Yelm/Thurston County  
26 Joint Plan "look good" does not deprive them of participation standing to appeal provisions  
27 of that plan.<sup>11</sup>  
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29  
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31 <sup>10</sup> Petitioner's Reply Brief at 3.

32 <sup>11</sup> Id. at 4.

1 With regard to the timeliness of their appeal of Resolution 13734, based on the adoption of  
2 the UGA in 1994, Petitioners note that this Board has already rejected this argument, and  
3 should do so again.<sup>12</sup> It points out that Finding 7 of Resolution No. 13734 states that the  
4 Yelm Joint Plan Growth Management Parameters Chapter is updated to include the most  
5 recent 20-year population projections, including 2026 figures, and confirms Yelm and its  
6 UGA have sufficient area to accommodate projected growth consistent with RCW  
7 36.70A.110(2) -- the very matter challenged here.<sup>13</sup>  
8

9  
10 With regard to the effect of the Board's UGA compliance order in Case No. 05-2-0002,  
11 Petitioners assert that order provides no basis for dismissing the present case. Petitioners  
12 note that the Yelm Comprehensive Plan Update and its data were not before the Board in  
13 Case No. 05-2-0002, nor were the arguments made by Petitioners in their prehearing  
14 brief.<sup>14</sup> Petitioners note that data relied on in the present case regarding market factors  
15 was not in the record in Case No. 05-2-0002, and it is not clear the Board would approve  
16 the Yelm UGA in light of this information.<sup>15</sup>  
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## 18 **Board Discussion**

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20 Prior to addressing the merits of the PFR, the Board must address procedural issues related  
21 to standing, timeliness, and the effect of this Board's holding in a related case.  
22

### 23 • *Preliminary Matters*

#### 24 Standing of Adams Cove Group

25 The County and Yelm challenge the standing of Adams Cove Group, contending that the  
26 comments submitted by this Petitioner in regards to the 2006 Comprehensive Plan Update  
27 are in no way related to the issues presented to the Board and therefore, Adams Cove does  
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29  
30 <sup>12</sup> Id.

31 <sup>13</sup> Id. at 5.

32 <sup>14</sup> Id. at 7.

<sup>15</sup> Id. at 8.

1 not have participation standing. The County points to two letters submitted by Adams Cove,  
2 which constituted the extent of its participation in the adoption of the Yelm/Thurston County  
3 Joint Plan. Those comments were, in their entirety:

4 "The Yelm/TC joint plan amendments look good. Population growth in Yelm  
5 was not managed well at first – something we can all acknowledge, especially  
6 if you happen to live in Yelm – but this is often the case when land rushes and  
7 outside interests cause explosive and unexpected land rushes. The proposed  
8 plan seems to be making the best of it."<sup>16</sup>

9 And

10 "It looks good."<sup>17</sup>

11 Petitioners do not appear to dispute that these letters are the limitations of their participation  
12 but rather focus on the sentence regarding population growth as evidence that Adams Cove  
13 Group raised concerns about the management of population growth in Yelm which is the  
14 basis of the issues presented. The Board disagrees. The statements, while brief, were  
15 supportive and did not raise any faults in the Plan. The mention of population growth  
16 issues clearly refers to *past* practices and does not reflect comments on the proposed plan  
17 amendments.  
18

19  
20 As noted by the Central Board,

21 "To have meaningful public participation and avoid 'blind-siding' local  
22 governments, members of the public must explain their land use planning  
23 concerns to local governments in sufficient detail to give the government the  
24 opportunity to consider these concerns as it weighs and balances its priorities  
25 and options under the GMA."<sup>18</sup>

26 This approach was approved by the Court of Appeals in *Wells v. Western Washington*  
27 *Growth Management Hearings Board* when it held "the Central Puget Sound Growth  
28 Management Hearings Board's analysis in the *Alpine v. Kitsap County* case sets the  
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31 <sup>16</sup> Thurston County Response, Attachment A.

32 <sup>17</sup> Thurston County Response, Attachment B.

<sup>18</sup> *Alpine v. Kitsap County*, CPSGMHB No. 98-3-0032c, Order on Dispositive Motions, 10/7/98.

1 appropriate standard for determining whether a petitioner has participated with respect to a  
2 "matter" before a local government."<sup>19</sup> The Court in *Wells* continued:

3 The GMA assumes the local government will have an opportunity to address those  
4 concerns before an appeal to the growth management hearings board. This  
5 facilitates the county's ultimate planning responsibility and avoids unnecessary  
6 appeals. However, it would be unrealistic given the time and resource constraints  
7 inherent in the planning process to require each individual petitioner to demonstrate  
8 to the growth management hearings board that he or she raised a specific legal issue  
9 before the board can consider it. The growth management hearings boards, with their  
10 expertise in these matters and their role as finders of fact, are best suited to decide  
11 whether, under the facts presented in a particular circumstance, a petitioner has  
12 established participation in a "matter."<sup>20</sup>

13 Furthermore, in *Wells* the Court stated with regard to the Legislature's intent in the use of  
14 the word "matter": "We conclude that it intended the word "matter" to refer to a subject or  
15 topic of concern or controversy."<sup>21</sup> Here, Adams Cove Group did not raise any subject or  
16 topic of concern in their comments, and did not suggest any controversy.

17 Adams Cove Group's statements did nothing to apprise the County of any concern that it  
18 had with the Yelm/Thurston County Joint Plan that necessitated attention. Instead, the  
19 County, City of Yelm, or any official reading those comments would have reasonably  
20 concluded Adams Cove Group fully supported its actions. It is simply contrary to the  
21 GMA's intent for active public participation for a petitioner to raise no concern whatsoever to  
22 a jurisdiction's proposed amendments and then challenge those amendments before the  
23 Board. Accordingly, the Board concludes Adams Cove Group lacks participation standing to  
24 bring this appeal and it is dismissed as a party.  
25  
26

#### 27 Timeliness of Petition for Review

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31 <sup>19</sup> 100 Wn.App. 657, 673 (2000).

32 <sup>20</sup> Id.

<sup>21</sup> Id.

1 The County and Yelm argue that this appeal is untimely because Petitioner failed to  
2 challenge the 1994 establishment of the Yelm UGA. This Board previously rejected this  
3 argument in the June 4, 2007 Order on Motion to Dismiss, in which the Board held that  
4 when the County chose to amend the population allocations for the Yelm UGA it necessarily  
5 raised the issue of whether the UGA was properly sized. Thus, based on the County's  
6 actions in amending the Yelm UGA population allocations, Petitioner may challenge the size  
7 of the Yelm UGA at the hearing on the merits. Accordingly, the Board reaffirms its holding  
8 and finds the appeal timely.  
9

10  
11 Effect of Compliance in *1000 Friends of Washington v. Thurston County* (Case No. 05-2-  
12 0002)

13 Finally, the Board must address the effect to be given to this Board's Order Finding  
14 Compliance (UGAs) in *1000 Friends of Washington v. Thurston County*, Case No. 05-2-  
15 0002. In that case, following the County's filing of its Compliance Report for Urban Growth  
16 Areas, the Board held a compliance hearing in which Futurewise (formerly 1000 Friends of  
17 Washington) participated and during which Futurewise did not object to a finding of  
18 compliance. In the Board's May 29, 2008 Compliance Order, the Board found Thurston  
19 County Resolution No. 14034 and Ordinance No. 14035 amending the Thurston County  
20 Comprehensive Plan and Zoning Map complied with RCW 36.70A.110.  
21  
22

23 However, what is presently before the Board is neither Resolution No. 14034 nor Ordinance  
24 No. 14035. As Futurewise points out, the Yelm Comprehensive Plan Update was not  
25 before the Board in that case. Instead, the present appeal challenges a plan that was not  
26 amended to comply with the County's action in adopting Resolution 14034 and Ordinance  
27 14035. The County and City concede that "Yelm's Comprehensive Plan needs to be  
28 modified to conform to Thurston County's Plan".<sup>22</sup> Therefore, the Board's task in this appeal  
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30  
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32 <sup>22</sup> Joint Prehearing Brief of Thurston County and the City of Yelm, at 10.

1 is to determine whether, on the record created for the adoption of Resolution 13734, the  
2 Yelm/Thurston County Joint Plan complies with the GMA.<sup>23</sup>

3  
4 • *Issues for Resolution*

5 In its briefing for the Hearing on the Merits, Thurston County and Yelm did not respond to  
6 Futurewise's arguments on Legal Issues 1-6. Instead, the jurisdictions rely on the  
7 presumption that the Plan is valid, with the burden resting upon Futurewise to demonstrate  
8 a failure to comply with the GMA.<sup>24</sup> Therefore, the Board will determine if Futurewise has  
9 carried its burden of proof.  
10

11  
12 Issue 1 - Alleged violation of RCW 36.70A.020 (1-2, 8-10, 12)

13 As Futurewise points out, the Yelm/Thurston County Joint Plan, in its "Analysis of Land  
14 Supply vs. Demand, 2000-2025,"<sup>25</sup> all lands – residential, commercial, and industrial – have  
15 an excess in need acreage. Futurewise sets forth the following calculations:<sup>26</sup>

16

Land Type	2000 Supply (acres)	2000-2025 Demand (acres)	Excess Supply/Demand
Residential	3,144	1,594	97.24%
Commercial	400	185	116.22%
Industrial	251	22	1040.91%

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24 The County and City have not disputed these numbers.  
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26  
27 The Court of Appeals noted in *Diehl v. Mason County*.<sup>27</sup>  
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29 <sup>23</sup> See, RCW 36.70A.280(1)(a).

30 <sup>24</sup> RCW 36.70A.320.

31 <sup>25</sup> IR 21, at III-7.

32 <sup>26</sup> Petitioners' HOM Brief, at 6, Table A.

<sup>27</sup> 94 Wn.App. 645, 653-54 (1999).

1 Respondents cite to several previous Board decisions that held that the OFM  
2 projections are a cap on urban growth and that a UGA must not be larger than  
3 needed to support the OFM maximum population projection. Other provisions of the  
4 GMA and its WACs support this interpretation as well. One of the goals of the GMA is  
5 to "[r]educe the inappropriate conversion of undeveloped land into sprawling, low-  
6 density development." RCW 36.70A.020(2). If a county could enlarge UGAs to  
7 accommodate any population maximum it chose, then the result would likely be the  
8 urban sprawl the GMA is trying to avoid. And, further, WAC 365-195-335(3)(e)(v),  
9 which addresses requirements for setting UGAs, specifically states that the UGAs  
10 "should encompass a geographic area which *matches* the amount of land *necessary*  
11 to accommodate likely growth." (Emphasis added.) Accordingly, the OFM projection  
12 places a cap on the amount of land a county may allocate to UGAs.

13 It is undisputed that the Joint Plan approved by Resolution 13734 permitted land supplies  
14 97% in excess of residential needs, 116% in excess of commercial needs, and 1040% in  
15 excess of industrial needs. The Board finds nothing in the record that demonstrates this  
16 supply of land is necessary to accommodate projected growth. Instead, such excess supply  
17 is likely to lead to the inappropriate conversion of undeveloped land into sprawling, low-  
18 density development in violation of RCW 36.70A.020(2).

19 Futurewise also argues that the sizing of the Yelm UGA violates Goal 1 because "urban  
20 growth is not being channeled into areas already served by infrastructure"<sup>28</sup> yet provides no  
21 evidence in support of its argument. A bare assertion alone is not sufficient to carry  
22 Petitioner's burden of proof. While it is possible, and perhaps likely, that the Yelm UGA is  
23 not served by "infrastructure," the obligation was upon Futurewise to demonstrate this, and it  
24 has not done so. Therefore, Futurewise has failed to carry its burden to prove a violation of  
25 RCW 36.70A.020(1).  
26

27  
28 Futurewise's arguments regarding alleged violations of Goal 10 is that sprawl and large  
29 urban development harm terrestrial and aquatic environments. Futurewise relies on a  
30  
31

32 <sup>28</sup> Futurewise Prehearing Brief at 9.  
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1 newspaper clipping concerning water quality in the south Puget Sound area,<sup>29</sup> an excerpt  
2 from the Puget Sound Action Team's "Literature Review and Analysis on Coastal  
3 Urbanization and Microbial Contamination of Shellfish Growing Areas,"<sup>30</sup> and an excerpt  
4 from the Environmental Protection Agency's "A Technical Review of the Interactions  
5 between Land Use, Transportation and Environmental Quality."<sup>31</sup> However, although all of  
6 these documents address the impacts of urbanization on the environment, Futurewise fails  
7 to provide any argument on how the information presented within these documents relate to  
8 the particulars of the size, location or nature of the Yelm UGA. Such general, non-site  
9 specific arguments are insufficient to carry Futurewise's burden of proof and do not  
10 demonstrate a violation of RCW 36.70A.020 (10).  
11  
12

13 Futurewise presented no argument regarding how the excess supply of land violated goals  
14 8, 9 or 12 of the GMA, as originally alleged in the Petition for Review and these claims are  
15 deemed abandoned.  
16

17 **Conclusion:** The Joint Plan approved by Resolution 13734 permitted land supplies 97% in  
18 excess of residential needs, 116% in excess of commercial needs, and 1040% in excess of  
19 industrial needs. The Board finds nothing in the record that demonstrates this supply of  
20 land is necessary to accommodate projected growth. Instead, such excess supply is likely  
21 to lead to the inappropriate conversion of undeveloped land into sprawling, low-density  
22 development in violation of RCW 36.70A.020(2).  
23  
24

25 Futurewise has failed to carry its burden to prove a violation of RCW 36.70A.020(1), (8), (9),  
26 (10) or (12).  
27

28 Issue 2 – Alleged violation of RCW 36.70A.040  
29

30 <sup>29</sup> IR 20C.

31 <sup>30</sup> IR 20D.

32 <sup>31</sup> IR 20F



1 Within its argument, Futurewise cites only to RCW 36.70A.040(3)(c) which merely provides  
2 that a county shall “designate and take other actions” related to urban growth areas under  
3 RCW 36.70A.110. While Futurewise argues that large excesses of capacity over demand  
4 are not reasonable market factors, market factors are not mandatory under the GMA and, in  
5 fact, are addressed in RCW 36.70A.110. At the hearing on the merits, Futurewise  
6 conceded this issue was included merely to bolster its argument in Issue 4 with regard to  
7 RCW 36.70A.110. The Board finds that Futurewise has not demonstrated a violation of  
8 RCW 36.70A.040(3)(c) and notes that it is not necessary for Petitioners to allege each cross  
9 reference to a section of the GMA at issue as a separate violation of the statute.  
10  
11

12 **Conclusion:** Futurewise has not demonstrated a violation of RCW 36.70A.040(3)(c).  
13

14 Issue 3 -- Alleged violation of RCW 36.70A.070(1)

15 Without identifying any particular portion of the land use element,<sup>32</sup> Futurewise asserts that  
16 the Land Use Element of the Yelm Comprehensive Plan Update “fails to provide the  
17 necessary guidance for corrective actions to mitigate or cleanse discharges that pollute  
18 waters of the State, including Puget Sound” in violation of the GMA.<sup>33</sup> As it argued with  
19 Issue 1, Futurewise asserts the size of the Yelm’s UGA causes pollution of Puget Sound’s  
20 waters.<sup>34</sup> While RCW 36.70A.070(1) does, in fact, require such guidance, that requirement  
21 does not arise in the context of sizing UGAs. In fact, the applicable provision states (in  
22 pertinent part):  
23

24 A land use element designating the proposed general distribution and general  
25 location and extent of the uses of land... The land use element shall include  
26 population densities, building intensities, and estimates of future population  
27 growth....Where applicable, the land use element shall review drainage,  
28 flooding, and storm water run-off in the area and nearby jurisdictions and  
29 provide guidance for corrective actions to mitigate or cleanse those discharges  
30

31 <sup>32</sup> Futurewise identifies the entire Land Use element as at issue.

32 <sup>33</sup> Futurewise Prehearing Brief at 11-12.

<sup>34</sup> Id.

1 that pollute waters of the state, including Puget Sound or waters entering  
2 Puget Sound.” RCW 36.70A.070(1)(emphasis added).

3  
4 RCW 36.70A.070(1) requires information related to the sizing of the UGA to be included in  
5 the land use element and, where applicable, provisions for corrective actions to mitigate or  
6 cleanse those discharges that pollute the waters of the state, including Puget Sound.

7 Futurewise does not claim that the County has failed to provide this information or the  
8 necessary provisions in the land use element, but argues that it is the size of the UGA that  
9 causes this pollution.<sup>35</sup>  
10

11 Futurewise has failed to demonstrate a violation of RCW 36.70A.070(1). Furthermore,  
12 Issue 3 asks: “Does the adoption of Resolution 13734 without reducing the size of the Yelm  
13 Urban Growth Area fail to comply with 36.70A.070(1)?” The focus of this issue and this  
14 appeal is the size of the Yelm UGA. Futurewise does not challenge deficiencies in  
15 completing the requirements for the land use element, and any allegations concerning the  
16 deficiencies of that aspect of the plan are not before the Board  
17

18  
19 **Conclusion:** Futurewise has failed to demonstrate a violation of RCW 36.70A.070(1).  
20

21 Issue 4 - Alleged violation of RCW 36.70A.110 (1) and (2)

22 As noted above, Resolution 13734 approved land supplies 97% in excess of residential  
23 needs, 116% in excess of commercial needs, and 1040% in excess of industrial needs.  
24 Futurewise’s argument is founded in the proposition that a UGA may be sized in excess of  
25 the land needed to accommodate the OFM population projection so long as a reasonable  
26 market factor is set forth and explained by the jurisdiction. Market factors account for  
27 vagaries of the real estate market supply and at a minimum take into account that not all  
28  
29  
30

31 <sup>35</sup> In Issue 1 *supra*, the Board found that Futurewise has not linked the size of Yelm’s UGA to the causes of  
32 Puget Sound pollution.

1 land suitable for development will be available for development in the 20-year planning  
2 horizon.

3  
4 While not stated as “market factors,” these excess supplies over demand for land are  
5 substantially beyond that amount needed to accommodate the OPM population chosen for  
6 by Thurston County and the City of Yelm. As pointed out by Futurewise, a team of  
7 economists and planners hired by the County to review the Thurston Regional Planning  
8 Council (TRPC) Buildable Lands Model concluded:  
9

10 As a preliminary step, we recommend that TRPC utilize no higher than  
11 a 10% market factor for vacant lands and no higher than a 15% market  
12 factor for underutilized lands. The market factors reflect the differences  
13 in difficulty in developing vacant and underutilized lands.<sup>36</sup>

14 While the Board does not conclude from this recommendation that the County or City were  
15 required to adopt the recommendations of its consultant team, there is nothing in the record  
16 to support the high percentage of excess lands that it did adopt. As the Court in *Diehl* held,  
17 “Although a county may enlarge a UGA to account for a ‘reasonable land supply market  
18 factor’ it must also explain why this market factor was used and how it was reached.”<sup>37</sup>  
19 This Thurston County has failed to do and therefore, the sizing of the Yelm UGA is not  
20 supported by the Record before the Board in regard to Resolution 13734. An improperly  
21 sized UGA, especially one in excess of the projected need, violates RCW 36.70A.110 which  
22 requires UGAs to be sufficient to accommodate 20 years of growth at urban levels.  
23

24  
25 **Conclusion:** The Yelm UGA, as addressed in Resolution 13734 violates RCW  
26 36.70A.110(1) and (2).  
27

28 Issue 5 - Alleged violation of RCW 36.70A.115

29 RCW 36.70A.115 provides:  
30

31 <sup>36</sup> IR 20.

32 <sup>37</sup> Diehl at 654.

1 Counties and cities that are required or choose to plan under RCW 36.70A.040 shall  
2 ensure that, taken collectively, adoption of and amendments to their comprehensive  
3 plans and/or development regulations provide sufficient capacity of land suitable for  
4 development within their jurisdictions to accommodate their allocated housing and  
5 employment growth, as adopted in the applicable countywide planning policies and  
6 consistent with the twenty-year population forecast from the office of financial  
7 management.

8 Futurewise's argument appears to be that just as RCW 36.70A.110 limits the size of UGAs,  
9 so too does 36.70A.115 and that a demonstration of a violation of the former proves a  
10 violation of the latter. As the Board noted in *Friends of Skagit County v. Skagit County*,

11 "The Board reads RCW 36.70A.115 as requiring a coordinated effort between  
12 a county and its cities to ensure that the adoption of subsequent amendments  
13 to comprehensive plans and development regulations, when taken collectively,  
14 will not adversely impact the supply of land needed to address allocated  
15 housing and employment growth for which the County and cities have  
16 planned." <sup>38</sup>

17 Thus, RCW 36.70A.115 is not merely a restatement of 36.70A.110. This provision of the  
18 GMA seeks regional coordination, which the Yelm/Thurston County Joint Plan reflects.

19  
20 **Conclusion:** Futurewise has failed to demonstrate that the County violated RCW  
21 36.70A.115.

22  
23 Issue 6 - Alleged violation of RCW 36.70A.120

24 Issue 6 has been abandoned by the Petitioner.

25  
26 Issue 7 - Alleged violation of RCW 36.70A.130(1)(a)

27 Futurewise alleges a violation of RCW 36.70A.130(1)(a). This provision pertains to the  
28 obligation to update plans and development regulations every seven years. Futurewise's  
29 reliance is apparently based on the first Finding of the Resolution that states, in part,  
30

31  
32 <sup>38</sup> WWGMHB No. 07-2-0025c, Order on Motion for Reconsideration, 6/18/08.

1 “Periodic amendments to plans in order to maintain GMA compliance are authorized by  
2 RCW 36.70A.130.” RCW 36.70A.130 sets out two kinds of amendment processes. The  
3 Board explained this in *1000 Friends and ProWhatcom*, WWGMHB Case No. 04-2-0010:

4 This provision of the GMA (RCW 36.70.130) contains two major kinds of revision  
5 requirements for comprehensive plans and development regulations. First,  
6 comprehensive plans and development regulations adopted pursuant to Ch. 36.70A  
7 RCW are subject to “continuing review and evaluation”.

8 While there is no express requirement that this be done every year, this type of  
9 review is usually done in an annual comprehensive amendment cycle, RCW  
10 36.70A.130(2)(a). The amendments adopted under this process may be appealed to  
11 the boards to determine whether the adopted amendments comply with the GMA; but  
12 these types of amendments are not required to ensure that the local jurisdiction’s  
13 entire comprehensive plan and development regulations comply with all the  
14 provisions of the GMA.

15 “Updates”, on the other hand, require a review and revision, if needed, of both the  
16 comprehensive plan and the development regulations to ensure their compliance  
17 with the GMA, according to a staggered schedule set out in RCW 36.70A.130(4):  
18 “Updates” means to review and revise, if needed, according to subsection (1) of this  
19 section, and the time periods specified in subsection (4) of this section...

20 An update requires that counties and cities review and revise, as needed, their plans  
21 and regulations, to ensure compliance with the GMA. RCW 36.70A.130(1)(a) and  
22 (2)(a) (in part). ...<sup>39</sup>

23 RCW 36.70A. 130 (2)(b) also specifies the meaning of the legislative action required by  
24 RCW 36.70A.130(1)(a):

25 Legislative action means the adoption of a resolution or ordinance following notice  
26 and a public hearing indicating at a minimum, a finding that a review and evaluation  
27 has occurred and identifying the revisions made, or that a revision was not needed  
28 and the reasons therefor.

29 However, no language in Resolution 13734 suggests this enactment was a seven year  
30 update to a comprehensive plan under that provision of the GMA. The County denied at the  
31

32 <sup>39</sup> Id. at 8.  
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1 hearing on the merits that it was such. The County asserted that their update required by  
2 RCW 36.70A.130(1)(a) was completed in 2004, and was the subject of the appeal in *1000*  
3 *Friends v. Thurston County*, WWGMHB Case No.05-2-0002. Futurewise has failed to  
4 demonstrate that Resolution 13734 was adopted pursuant to RCW 36.70A.130(1)(a) and  
5 consequently has not proven a violation of that section.  
6

7 **Conclusion:** Futurewise has failed to demonstrate that Resolution 13734 violates RCW  
8 36.70A.130(1)(a).  
9

## 10 VI. FINDINGS OF FACT

- 11 1. Thurston County is a county located west of the crest of the Cascade Mountains that  
12 is required to plan pursuant to RCW 36.76A.040.
- 13 2. On December 20, 2006 the County adopted Resolution 13734, amending the  
14 Comprehensive Plan for Thurston County and the joint plan with the City of Yelm.
- 15 3. Futurewise participated in the proceedings to adopt Resolution 13374 and its  
16 standing has not been challenged.
- 17 4. On February 16, 2007 Petitioners filed a timely appeal.
- 18 5. Resolution 13734 approved land supplies 97% in excess of residential needs, 116%  
19 in excess of commercial needs and 1040% in excess of industrial needs.
- 20 6. The sole comments of the Adams Cove Group, during the adoption process of  
21 Resolution 13734 were in letters that stated:

22 "The Yelm/TC joint plan amendments look good. Population growth in  
23 Yelm was not managed well at first – something we can all acknowledge,  
24 especially if you happen to live in Yelm – but this is often the case when  
25 land rushes and outside interests cause explosive and unexpected land  
26 rushes. The proposed plan seems to be making the best of it." (dated  
27 September 20, 2006)

28 And

29 "It looks good." (dated November 28, 2006)  
30  
31  
32

- 1 7. This Board held in the June 4, 2007 Order on Motion to Dismiss, that when the  
2 County chose to amend the population allocations for the Yelm UGA, it necessarily  
3 raised the issue of whether the UGA was properly sized.  
4  
5 8. The present appeal challenges the adoption of Resolution 13734, a plan that was not  
6 amended to comply with the County's action in adopting Resolution 14034 and  
7 Ordinance 14035.  
8  
9 9. The Yelm/Thurston Joint Plan approved by Resolution 13734 permitted land supplies  
10 97% in excess of residential needs, 116% in excess of commercial needs,  
11 and 1040% in excess of industrial needs.  
12  
13 10. Futurewise fails to provide any argument on how the information presented within a  
14 newspaper clipping concerning water quality in the south Puget Sound area,<sup>40</sup> an  
15 excerpt from the Puget Sound Action Team's "Literature Review and Analysis on  
16 Coastal Urbanization and Microbial Contamination of Shellfish Growing Areas,"<sup>41</sup>  
17 and an excerpt from the Environmental Protection Agency's "A Technical Review of  
18 the Interactions between Land Use, Transportation and Environmental Quality relate  
19 to the particulars of the size, location or nature of the Yelm UGA.  
20  
21 11. Futurewise does not claim that the County has failed to provide the needed  
22 information or required provisions of a land use element.  
23  
24 12. No language in Resolution 13734 suggests this enactment was a seven year update  
25 to a comprehensive plan under that provision of the GMA.  
26  
27 13. Issue 6 has been voluntarily abandoned by Petitioners.  
28  
29 14. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.  
30

## 31 VII. CONCLUSIONS OF LAW

- 32 A. The Board has jurisdiction over the parties to this action.  
B. The Board has jurisdiction over the subject matter of this action

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<sup>40</sup> IR 20C.

<sup>41</sup> IR 20D.

- 1 C. Petitioner Futurewise has standing to raise the issues in this case pursuant to RCW  
2 36.70A.280(2).
- 3 D. Petitioner Adams Cove Group lacks participation standing pursuant to RCW  
4 36.70A.280(2)
- 5 E. Based on the County's actions in amending the Yelm UGA population allocations,  
6 Futurewise may challenge the size of the Yelm UGA. The appeal is timely pursuant  
7 to RCW 36.70A.290(2).
- 8 F. The Board's Order Finding Compliance (UGAs) in *1000 Friends of Washington v.*  
9 *Thurston County*, Case No. 05-2-0002 does not preclude the present appeal where  
10 the issue is Resolution 13734 and its compliance with the GMA.
- 11 G. The excess supply of residential, commercial and industrial land provided for in  
12 Resolution 13734 is likely to lead to the inappropriate conversion of undeveloped  
13 land into sprawling, low-density development in violation of RCW 36.70A.020(2).
- 14 H. Futurewise has failed to carry its burden to prove a violation of RCW 36.70A.020(1),  
15 (8), (9), (10) or (12).
- 16 I. Futurewise has not demonstrated a violation of RCW 36.70A.040(3)(c).
- 17 J. Futurewise has failed to demonstrate a violation of RCW 36.70A.070(1).
- 18 K. The Yelm UGA, as addressed in Resolution 13734 violates RCW 36.70A.110(1) and  
19 (2).
- 20 L. Futurewise has failed to demonstrate that the County violated RCW 36.70A.115.
- 21 M. Futurewise has failed to demonstrate that Resolution 13734 violates RCW  
22 36.70A.130(1)(a).
- 23 N. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.

## 24 VIII. ORDER

25 Based on the foregoing, the City/County is ordered to bring the Yelm/Thurston Joint Plan  
26 into compliance with the Growth Management Act pursuant to this decision within 180 days.



1 Compliance shall be due no later than January 28, 2009. The following schedule for  
2 compliance, briefing and hearing shall apply:  
3

Item	Date Due
<b>Compliance Due</b>	<b>January 28, 2009</b>
Compliance Report and Index to Compliance Record	February 11, 2009
Objections to a Finding of Compliance	March 4, 2009
Response to Objections	March 25, 2009
<b>Compliance Hearing</b>	<b>April 8, 2009</b>

10  
11 DATED this 28th day of July, 2008.  
12  
13

14 \_\_\_\_\_  
James McNamara, Board Member

15  
16 \_\_\_\_\_  
17 Holly Gadbow, Board Member  
18

19  
20 \_\_\_\_\_  
21 William Roehl, Board Member  
22

23 Pursuant to RCW 36.70A.300 this is a final order of the Board.

24 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the  
25 mailing of this Order to file a petition for reconsideration. Petitions for  
26 reconsideration shall follow the format set out in WAC 242-02-832. The original and  
27 three copies of the petition for reconsideration, together with any argument in  
28 support thereof, should be filed by mailing, faxing or delivering the document directly  
29 to the Board, with a copy to all other parties of record and their representatives.  
30 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),  
31 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for  
32 filing a petition for judicial review.

1 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
2 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
3 judicial review may be instituted by filing a petition in superior court according to the  
4 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
5 Enforcement. The petition for judicial review of this Order shall be filed with the  
6 appropriate court and served on the Board, the Office of the Attorney General, and all  
7 parties within thirty days after service of the final order, as provided in RCW  
8 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,  
but service on the Board means actual receipt of the document at the Board office  
within thirty days after service of the final order.

9 **Service.** This Order was served on you the day it was deposited in the United States  
10 mail. RCW 34.05.010(19)